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Feb 07, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

BONNIE LYONS, individually and as
distributee of the Estate of Robert C.
Lyons; ESTATE OF ROBERT C.
LYONS; and CHELAN COUNTY,
WA,

Defendants.

No. 2:17-cv-00361-SMJ

**ORDER GRANTING MOTION
FOR DEFAULT JUDGMENT**

Before the Court, without oral argument, is the Government's Motion for Default Judgment Against the Estate of Robert C. Lyons, ECF No. 44. The Government moves for entry of a default judgment against the Estate of Robert C. Lyons (the "Estate"), against which the Government brought suit to secure a judgment for outstanding federal trust fund recovery assessments and to foreclose on tax liens against real property in Washington. *See* ECF Nos. 1, 44. The Estate failed to file an answer to the Complaint, and on motion of the Government, the Clerk's Office entered an Order of Default. *See* ECF Nos. 29, 32. The Government now moves for entry of default judgment.

1 Entry of default judgment is discretionary. *Aldabe v. Aldabe*, 616 F.2d 1089,
2 1092 (9th Cir. 1980). Where possible, cases should be resolved on their merits, and
3 the entry of default judgment is an extreme measure reserved for unusual
4 circumstances. *Westchester Fire Ins. Co. v. Mendez*, 585 F.3d 1183, 1189 (9th
5 Cir. 2009) (citing *Peña v. Seguros La Comercial, S.A.*, 770 F.2d 811, 814 (9th
6 Cir. 1985)). In evaluating the propriety of default judgment, the Court is guided by
7 seven non-exclusive factors:

8 (1) [T]he possibility of prejudice to the plaintiff, (2) the merits of
9 plaintiff's substantive claim, (3) the sufficiency of the complaint, (4) the
10 sum of money at stake in the action[,] (5) the possibility of a dispute
concerning material facts[,] (6) whether the default was due to
excusable neglect, and (7) the strong policy underlying the Federal
Rules of Civil Procedure favoring decisions on the merits.

11 *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986). The Court assumes the
12 facts alleged in the complaint are true. *Geddes v. United Fin. Grp.*, 559 F.2d 557,
13 560 (9th Cir. 1977). Having reviewed the motion and the record in this matter in
14 light of the *Eitel* factors, the Court is fully informed and finds that entry of default
15 judgment is appropriate in this case.

16 First, the Court is persuaded that refusing to enter default judgment would
17 prejudice the Government. *Eitel*, 782 F.2d at 1471–72. Prejudice results from denial
18 of a default judgment where it would provide the only reasonable avenue for a
19 plaintiff to recover. *Philip Morris USA, Inc. v. Castworld Prods., Inc.*, 219 F.R.D.
20 494, 499 (C.D. Cal. 2003). Such is the case where, as here, the plaintiff could be

1 denied recovery “until such time as Defendant participates . . . in the litigation—
2 which may never occur.” *Getty Images (US), Inc. v. Virtual Clinics*, No. C13-
3 0626JLR, 2014 WL 358412, at *3 (W.D. Wash. Jan. 31, 2014) (quoting *United*
4 *States v. Ordonez*, No. 1:10-cv-01921-LJO-SKO, 2011 WL 1807112, at *2 (E.D.
5 Cal. May 11, 2001)).

6 Here, the Government brought suit against both the Estate and Bonnie Lyons
7 and subsequently entered a stipulated judgment with Ms. Lyons for approximately
8 half the outstanding penalty assessments. *See* ECF Nos. 1, 42. Thus, as the
9 Government asserts, the only remaining possibility for recovering any of the
10 outstanding obligations is by way of the Estate “if it is later found to own property.”
11 ECF No. 44 at 5. Declining to enter default judgment would in practical terms
12 necessitate an appropriate motion for judgment on the pleadings or a motion for
13 summary judgment. Given that the Estate did not file an answer or otherwise
14 participate in its defense, the Court finds such alternatives would be wasteful.

15 Second, the Court is satisfied based on a review of the record that the
16 Government’s claims against the Estate are meritorious. *See Eitel*, 782 F.2d at
17 1471–72. The Complaint alleges Robert Lyons willfully failed to withhold required
18 taxes in his role as president of R&B Distribution, Inc., resulting in the assessment
19 of penalties totaling approximately \$461,156, inclusive of interest as of October 16,
20 2017. *See* ECF No. 1 at 5–8. The Government submitted the sworn declaration of

1 Richard Ped, a Revenue Officer employed by the Internal Revenue Service,
2 attesting to the validity of the assessments and providing supporting documentation.

3 *See* ECF Nos. 45, 45-1 & 45-2. Considering this evidence and taking the well-
4 pleaded facts in the Complaint as true, the Court concludes the Government's
5 claims are substantively meritorious. Relatedly, the Court finds the Complaint is
6 sufficient; it invokes the Government's right to relief under a federal statute, 26
7 U.S.C. § 6672, and sets forth the essential facts necessary to substantiate that claim.

8 *See generally* ECF No. 1; *see also* *Eitel*, 782 F.2d at 1471–72.

9 Next, the Court considers the sum of money at stake in the action. *See Eitel*,
10 782 F.2d at 1471–72. Excepting the stipulated judgment entered against Bonnie
11 Lyons, the Government seeks entry of judgment against the Estate for \$263,651.60,
12 exclusive of statutory interest accrued after October 8, 2019. ECF No. 44 at 8–9.
13 This is a significant sum of money, which weighs in favor of resolving this matter
14 on the merits. Nevertheless, in view of the remaining factors and the circumstances
15 of this case, the Court finds this fact does not prevent entry of default judgment.

16 Next, the Court must consider whether there is a possibility of a dispute over
17 the material facts in this matter. *See Eitel*, 782 F.2d at 1471–72. Considering the
18 facts set out in the Complaint, the declaration of Richard Ped, and the supporting
19 documentation submitted with that declaration, the Court finds a genuine dispute as
20 to the validity or amount of the assessments against the Estate is unlikely. *See* ECF

1 Nos. 1, 45, 45-1 & 45-2.

2 The Court also considers the possibility that the Estate's default was due to
3 excusable neglect. *See Eitel*, 782 F.2d at 1471–72. There is no excusable neglect
4 where a defendant is “properly served with the complaint, the notice of entry of
5 default, [and] the papers in support of the [default judgment] motion.” *Shanghai*
6 *Automation Instrument Co. v. Kuei*, 194 F. Supp. 2d 995, 1005 (N.D. Cal Nov. 2,
7 2001). Here, the taxpayer whose actions precipitated the penalty assessments at
8 issue is deceased and, as the Government observes, the individual most likely to
9 intervene in the Estate's defense is Bonnie Lyons, who has been aware of this action
10 since early 2018, when she waived formal service. ECF No. 44 at 8; ECF No. 10.
11 No one has appeared or litigated on behalf of the Estate, and the Court considers it
12 unlikely that this is the result of excusable neglect.

13 Finally, the Court considers the strong preference, expressed in the Federal
14 Rules of Civil Procedure, for resolution of claims on the merits. *See Eitel*, 782 F.2d
15 at 1471–72; *Pena v. Seguros La Comercial, S.A.*, 770 F.2d 811, 814 (9th Cir. 1985).
16 Although this factor “almost always disfavors the entry of default judgment,” it is
17 not dispositive. *Vawter v. Quality Loan Serv. Corp. of Wash.*, No. C009-1585JL R,
18 2011 WL 1584434, at *6 (W.D. Wash. Apr. 27, 2011). That strong preference
19 notwithstanding, the Court finds this is an appropriate case for entry of default
20 judgment. This matter has been pending since late 2017 and seeks to recover tax

1 obligations which appear well documented and not reasonably disputed. Because
2 the Estate has, to this time, taken no steps toward mounting a defense against the
3 suit, the Court finds entry of default judgment is the most appropriate, just, and
4 efficient resolution to this matter. As the Government observes, entry of judgment
5 against the Estate resolves all outstanding claims in this matter, and the case is now
6 closed.

7 Accordingly, **IT IS HEREBY ORDERED:**

- 8 1. The Government's Motion for Default Judgment Against the Estate of
9 Robert C. Lyons, ECF No. 44, is **GRANTED**.
- 10 2. The Clerk's office shall **ENTER JUDGMENT** in favor of the United
11 States of America against the Estate of Robert C. Lyons, in the amount
12 of \$263,651.60 as of October 8, 2019, with statutory interest and
13 additions continuing to accrue pursuant to 26 U.S.C. §§ 6601, 6621,
14 6622, and 28 U.S.C. § 1961(c) after October 8, 2019, for Trust Fund
15 Recovery Penalty assessments for the tax periods ending 03/31/2005;
16 06/30/2005; 09/30/2005; 12/31/2005; 06/30/2006; and 09/30/2006.

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1 3. All pending motions are **DENIED AS MOOT**.
2 4. All hearings and other deadlines are **STRICKEN**.
3 5. The Clerk's Office is directed to **CLOSE** this file.

4 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and
5 provide copies to all counsel and *pro se* Defendants.

6 **DATED** this 7th day of February 2020.

7 
8 SALVADOR MENDEZA, JR.
9 United States District Judge